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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,249	11/17/2000	Susanne Dagmar Pippig	4-31192/CIP	7928

7590 09/04/2003

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EXAMINER

MARVICH, MARIA

ART UNIT

PAPER NUMBER

1636

DATE MAILED: 09/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/715,249	Applicant(s) PIPPIG ET AL.	
	Examiner Maria B Marvich, PhD	Art Unit 1636	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an ~~NA~~ explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 20,23-26,36-38 and 42-72.

Claim(s) objected to: 39-41.

Claim(s) rejected: 27 and 29.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: the affidavit does not show that applicant was in possession of the entire invention as claimed (see MPEP 715.02). Specifically, the Invention Disclosure does not establish that applicants had developed a method of identifying mammalian hematopoietic cells expressing a protein of interest. Part a) of claim 27 states that mammalian hematopoietic cells are introduced with nucleic acid comprising a DNA sequence encoding a protein of interest. In part c) of claim 27, the cells are obtained that express the portion of interest. In the Invention disclosure accompanying the Declaration of Prior Invention under 37 CFR 1.131, the construction of mutated EGFR and expression in CD34+ cells is described. Cells are analyzed by FACS analysis, notebook 1498-20 page 19. However, the applicants do not teach mammalian cells transduced with a nucleic acid comprising a DNA sequence encoding a protein of interest nor do they teach methods steps for the identification of mammalian cells obtained that express the protein of interest.

Applicants describe their invention, in the Brief Description of Invention, as a method to use mutated versions of EGFR as selectable cell surface markers as a safe means to identify cells that express the mutated EGFR. It is not contemplated that the invention be used to identify mammalian hematopoietic cells that express a protein of interest as a novel aspect or a utility of the invention.


TERRY MCKELVEY
PRIMARY EXAMINER